

REMARKS

I. Status of the Claims

After amendment, claims 1-3, 10-12, and 14-23 are pending. Without prejudice or disclaimer, claims 4, 5, 8, 9, and 13 are canceled herein. Without prejudice or disclaimer, claims 1 and 19 are amended herein. Support for these amendments is provided in the original claims and as-filed specification.

II. Specification

Applicants respectfully submit that the abstract of the disclosure does commence on a separate sheet, following page 100 of the as-filed specification. However, in an effort to expedite prosecution, Applicants submit herewith a new abstract of the disclosure that is presented on a separate sheet apart from any other text in accordance with 37 CFR 1.52(b)(4).

III. Claim Objections

Claim 13

The Office objected to claim 13 “under 3 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Office Action at page 5. Without prejudice or disclaimer, claim 13 is canceled herein.

Claim 19

The Office objected to claim 19 because “the claim should read that the viscosity agent is glycerol alone, not ‘is chosen from glycerol.’” *Id.* Without prejudice or disclaimer, claim 19 is amended herein to recite, in relevant part, “the at least one viscosity enhancing agent is glycerol.”

IV. Rejection Under 35 U.S.C. § 102

The Office rejected claims 1-9, 15, 16, and 20-23 “under 35 U.S.C. 102(b) as being anticipated by Osman et al ((WO 00/72821, provided by the applicant)” (“Osman”). Office Action at page 2.

Applicants respectfully disagree, however, solely to advance prosecution, Applicants have amended claim 1 to recite, in relevant part, “wherein the gas consists essentially of gaseous nitrogen present in an amount ranging from 0.01% to 0.8% by volume and a physiologically acceptable gas mixture comprising 10% to 90% vol/vol carbon dioxide with the remaining gas oxygen.”

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”

M.P.E.P 2131 (*quoting Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). Osman does not teach every limitation of independent claim 1, as amended. Specifically, Osman does not teach “the gas consists essentially of gaseous nitrogen present in an amount ranging from 0.01% to 0.8% by volume and a physiologically acceptable gas mixture comprising 10% to 90%

vol/vol carbon dioxide with the remaining gas oxygen.” Therefore, Osman does not anticipate claim 1, as amended. Further, claims 2-9, 15, 16, and 20-23 depend directly from claim 1, therefore, Osman does not anticipate these dependant claims. The rejections under 35 U.S.C. § 102(b) are therefore moot, and Applicants respectfully request their withdrawal.

V. Rejection Under 35 U.S.C. § 103

The Office rejected claims 14 and 17-19 under 35 U.S.C. § 103(a) “as being unpatentable over Osman et al.” Office Action at page 3. Additionally, the Office rejected claims 10-13 under 35 U.S.C. § 103(a) “as being unpatentable over Osman et al. in view of Gravanga et al (US 6,605,066).” *Id.* at page 4. Applicants respectfully disagree and traverse for the following reasons.

Applicants disagree that the claims are unpatentable over *Osman* or *Osman* in view of *Gravanga*, however, solely to advance prosecution, Applicants have amended claim 1 herein to recite in relevant part “the gas consists essentially of gaseous nitrogen present in an amount ranging from 0.01% to 0.8% by volume and a physiologically acceptable gas mixture comprising 10% to 90% vol/vol carbon dioxide with the remaining gas oxygen.” Nothing in the art fairly suggests a therapeutic foam with a gas phase with nitrogen present in an amount ranging from 0.01% to 0.8% as in claim 1, as amended. Claims 10-13, 14, and 17-19 all depend from claim 1, therefore, this amendment renders these rejections under 35 U.S.C. § 103 moot, and Applicants respectfully request their withdrawal.

VI. Conclusion

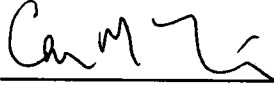

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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